IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17878 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAZARBHAI NAJARUBHAI MAKRANI - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR M R MOLAVI for Petitioner(s) : 1,
MS HANSA PUNANI, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 10/10/2005

ORAL JUDGMENT

1.This petition is filed under Article 226 of the Constitution of India, challenging the order of detention dated 16.07.2005 passed by the Police Commissioner, Surat City, respondent No. 3 herein,

detaining the detenue as dangerous person, as defined under Section 2(C) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), as violative of Articles 14 & 24 of the Constitution of India.

2. The order of detention and the grounds supplied as per the requirement of Sub Section 1 of Section 9 of the Act reveal about registration of C.R. Nos. 16/05, 225/05 and 373/04 at Katargam Police Station for the offences punishable under Sections 379, 114, 411,380, 461, 454 and 457 of Indian Penal Code. The concerned authority has also relied on the statements of two secret witnesses, which mention about the incidences that took place on 12.05.2005 and 29.05.2005 about usage of abusive language, showing weapons to the members of public by the detenue and thus by such illegal activities, resulting into disturbance of public order. Thereafter, the authority has arrived at the subjective satisfaction that though the detenue was enlarged on bail, it was found by the detaining authority that the type of offences registered against the detenue may cause disturbance to the maintenance of public order and therefore the power under sub-

section 1 of Section 3 have been exercised by the detaining authority.

3. Learned counsel for the petitioner has challenged the order of detention dated 16.07.2005 mainly on the grounds relying upon the decision in the case of **Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675** about subjective satisfaction of the detaining authority detaining the detenue, even though such detenue is in judicial custody. The recital of usual phrases of detenue preferring bail application and grant of such application by the Competent Court of law and, thereafter again indulge into similar activities, must have foundation or basis in the backdrop of relevant materials. For arriving at a subjective satisfaction, as stated in Para-4 of the above judgment, ipse dixit of the concerned officer about apprehension of detenue indulging in similar activities on enlargement of the bail is not sufficient, since preferring of bail application and released on bail both are different aspects. There existed no material for the detaining authority to arrive at such subjective satisfaction and therefore in the present case also, according to the learned counsel

for the petitioner, the ratio of the above decision is clearly applicable. He has also submitted that the activities of the detenue, do not lead to disturbance of public order and effective remedies are available under other ordinary statutes, since the activities as alleged, would be a question of law and order and not the public order. On both these counts, the challenge to the detention order is made and it was submitted that the order of detention requires to be quashed and set aside.

4. The learned Asst. Govt. Pleader, Ms. Hansa Punani supported the order of detention and submitted that considering registration of various crimes under Indian Penal Code, as reflected in the order of detention, and the statements of witnesses would reveal that the petitioner is a headstrong person and indulges into criminal activities at public places, which disturbs public order and the satisfaction of the detaining authority about future activities, which may be carried out by the detenue after getting bail from the Court, is also based on adequate material.

5. Considering the facts of the present case and on

perusal of records and rival submissions of the learned advocate for the respective parties, I am of the opinion that the activities of the detenue as alleged and reflected in the order of detention, is about various offences registered under Indian Penal Code and two statements of the witnesses about prejudicial activities carried out by the detenue. The above materials do not reflect habitual nature of the detenue in indulging into anti-social activities and powers under detention law requires something more than the registration of crimes. In the facts of the present case, gravity of the offences as alleged, cannot be said to have bearing on normal social life and therefore it is a question of law and order and not the public order.

6. Even otherwise, on non-application of mind by the detaining authority in arriving at subjective satisfaction, so far the detenue carrying out illegal activities in future, after getting himself released on bail, no material exist with the detaining authority, which can lead to a conclusion or even prediction that the detenue is likely to indulge into similar illegal activities in future also and therefore the detention

of the detenue is required. On this ground also, the case of the detenue is covered under the law laid down in the case of **Amrutlal Vs. Union of India reported** in **AIR 2000 SC 3675.**

7. In view of the above, the order of detention dated 16.07.2005 passed by the Police Commissioner, Surat City, respondent No. 3 herein, is illegal and unconstitutional and is quashed and set aside. The detenue viz. Razakbhai Najrubhai Makrani is ordered to be set at liberty forthwith, if not required in connection with any other case by any other authority. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)

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